IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5311 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTILAL N SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR MR GEHANI for Petitioner No. 1

Mr.A.Y. Kogje, ASSTT GOVERNMENT PLEADER for Respondent No. 1

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CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/10/2001

ORAL JUDGEMENT

When the matter is called out learned advocate for the petitioner is not present. However, learned Assistant Govt. Pleader, Mr.A.Y. Kogje is present and assisted the Court. It is the case of the petitioner that the petitioner has joined service on 29.6..1956 in

Public Department as Overseer and he was working as (Executive Engineer) Deputy Director in Engineering Staff training College, Gandhinagar at the time when this petition was filed. The petitioner received a letter dated 13.2.1989, a copy of which is produced at Annexure 'A'. The petitioner replied to it by letter dated 28.4.1989. Certain charges were levelled against the petitioner by the said letter dated 13.2.1989. Thereafter, the petitioner received an intimation by letter dated 21.7.1989 asking him to appear before the Govt. on 28.7.1989. The grievance of the petitioner is that during pendency of the aforesaid proceedings, the petitioner was served with an order on 25.7.1989 and on the same day he was retired from service with immediate effect. A copy of the said order is at Annexure 'C'. It is mentioned in that order that the petitioner is retired by exercising powers conferred under clause (aa) of subrule (1) of Rule 161 of Bombay Civil Service Rules, 1959. It is stated in the said order that,

".. .. the Government is pleased to direct that in the interest of public service Shri K.N. Shah, Executive Engineer shall retire from Govt. service w.e.f. the date of delivery of this order to him."

2. The petitioner also received another letter dated 25.7.1989, a copy of which is produced at Annexure 'D' to this petition whereby departmental proceedings were ordered to be continued even after the retirement of the petitioner. The challenge of the petitioner is that during pendency of the departmental proceedings, the Govt. could not have issued the impugned order dated 25.7.1989. The prayer of the petitioner is to quash and set aside the order dated 25.7.1989, Annexure 'C' and to continue the petitioner in service.

3. The Court issued notice on 27.7.1989 making it returnable on 18.8.1989 for admission and also for interim relief. On 18.8.1989 the Court issued rule making it returnable on 29.9.1989, but did not think fit to grant interim relief.

4. Today, when the matter is called out, learned Asstt. Govt. Pleader pointed out the contents of para 5 of the affidavit in reply wherein it is stated that,

".. .. the contentions are misconceived in law and facts and deponent denies the same. The petitioner was retired by the Govt. after giving him notice pay of three months as a result

> of review at the age of 55 years. It is further submitted that the petitioner was retired by the Govt. under sec.161 (1) (a)(a) of the Bombay Civil Service Rules after giving him notice pay of three months. .. .."

It is also stated in the said affidavit in reply that the said rule does not contain any provision for giving an opportunity of hearing to the petitioner. The other contentions, averments and allegations are denied by the affidavit in reply.

5. Learned Assistant Govt. Pleader Mr.Kogje relied upon the judgement of the Apex Court in the matter of Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, (1992) 2 SCC 299. He submitted that the order of compulsory retirement does not amount to punishment and hence principles of natural justice are not required to be observed in passing of order of compulsory retirement. He also submitted that the scope of judicial review of the order is limited and an order can be taken in judicial review only on the grounds of mala fide, arbitrariness and perversity. He further submitted that in the present case the petitioner has challenged the order of compulsory retirement on the ground of violation of principles of natural justice as contended in para 5 of the petition. He also submitted that though it is mentioned that the order passed by the Government is arbitrary and violative of Articles 14 and 16 of the Constitution of India he has not set out any grounds for the same and has not given any supporting material to substantiate his contentions. Mr.Kogje submitted that from the tenor of the petition it is clear that only ground of challenge is that the order was passed without giving him full opportunity and that the order is passed arbitrarily as it was without observing principles of natural justice. He submitted that in the facts of the case the present decision of the Supreme Court is squarely applicable and once it is held by the Supreme Court that the order of compulsory retirement does not amount to punishment and hence principles of natural justice are not required to be observed, the petition is required to be dismissed and no relief as prayed for is required to be granted.

6. Learned Assistant Govt. Pleader Mr.Kogje also relied upon another judgement of the Apex court in the matter between Chief General Manager, State Bank of India, Bhubaneswar and others v. Suresh Chandra Behera, (1995) 3 SCC 608. He submitted that the Apex Court has held that when an authority exercises its discretion to

retire an officer by exercising the power, on the basis of findings reached by the Reviewing Committee after a detailed examination of the service records, the same cannot be a subject matter of judicial review. Learned Assistant Government Pleader submitted that in the present case the petitioner is not retired as a result of the departmental inquiry which has been continued after his retirement under Rule 189A of the Bombay Civil Service Rules. Learned Assistant Govt. Pleader also invited attention of the Court to the averments made in para 4 of the affidavit in reply wherein it is stated that,

> ".. .. It is further denied that the whole service of the petitioner is satisfactory. There are so many adverse remarks in his confidential records. The adverse remarks in his C.R. of the years 1963-- 64, 1964-- 65, 1970, 1972, 1973, 1974-- 75, 1975-- 76, 1977-78, 1980-81, 1981-- 82 and 1982-- 83 were also communicated to him at the relevant time. The corrective remarks in his C.R. of the year 1983-- 84 and 1985-- 86 were also communicated to him at the relevant time. Moreover, his one increment was stopped as a result of the Departmental Inquiry under Govt. Order No.B & CD No.RHT 1178 (1) E(1) dated 21.2.81."

7. He also submitted that it is specifically mentioned in the order impugned that the petitioner is retired by the Govt. under sec.161 (1) (a)(a) of the Bombay Civil Service Rules after giving him notice of three months.

8. On perusal of the papers produced along with the petition and on perusal of the affidavit in reply, no substance is found in the petition. Hence the petition fails. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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